IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19099 of 2023
and
W.M.P.Nos.18350 and 18353 of 2023

M/s.Shri Krishna Castles Limited,
Represented by its Director
P.Nanda Kumar,
No.15, Devapragrasam Trade Centre,
Poonamallee High Road, Maduravoyal,
Chennai - 600 095. ... Petitioner

Vs.

1.The Commissioner of GST & Central Excise,
Office of the Commissioner of GST & Central Excise,
Newry Towers, Anna Nagar,
Chennai - 600 040.

2.The Commissioner (Appeals-II),
Office of the Commissioner of GST
& Central Excise (Appeals-II),
Newry Towers,
2nd Floor, No.2054/I,
II Avenue, 12th Main Road,
Anna Nagar,
Chennai - 600 040. ... Respondents
(2nd respondent *suo motu* impleaded vide
order of this Court in W.P.No.19099 of 2023
dated 20.09.2023)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call upon the impugned order passed by the respondent in Order-in-Appeal No.149/2023 dated 28.03.2023 vide DIN No.20230359KU000712630 and seeking to quash the same as illegal, arbitrary and violative of the principles of natural justice and to issue a consequential direction to the respondent to condone the delay and take up the appeal in the file no.A/No.123/CTA-II/CS dated 03.06.2022, on merit.

For Petitioner : Ms.P.Jayalakshmi

For Respondent : Mrs.R.Hemalatha
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned Order-in-Appeal No.149/2023 dated 28.03.2023 passed by the Commissioner (Appeals-II).

2. Since the petitioner has not impleaded the Commissioner (Appeals-II) as a respondent, Court is inclined to *suo motu* implead the Commissioner (Appeals-II), Office of the Commissioner of GST & Central Excise (Appeals-II) as a second respondent.

3. Operative portion of the impugned order reads as under:-

"5. I have gone through the appeal papers, available records in this case and position of the law in the matter. The dates on which the impugned order was received and the dates on which appeal is to be filed, are stated below:

Appeal No. & Date	***OIO No. & Date***	***Date of Receipt as per the appellant***	***Date by which appeal is to be filed***	***Date by which the appeal is to be filed with condonation***
123/2022/ CTA-II/CS dt 03.06.2022	04/2021-22 dt. 25.02.2022	09.03.2022	07.05.2022	06.06.2022

6.0 I find that the appeal has been filed on 03.06.2022. The normal period for filing appeal is 60 days and the appeal ought to have been filed by 07.05.2022. Vide the Condonation application dt. 03.06.2022, they have stated the following:

> ***"The appellant had received the impugned order on 09.03.2022. The appeal ought to have been filed on or before 07.05.2022. However, due to the prevailing third wave of Covid-19, there was some delay in handling over the papers to the advocate. Therefore, there is a delay of 28 days in filing the present appeal."***

6.1 The appellant has stated that Covid - 3rd wave delayed handing over of files to their advocate for filing appeal. There was no such wave. Hon'ble SC recognising problem due to Covid gave suo moto extension for filing appeal till 29.05.2022 where appeal period ended prior to that date. No such extension subsequently was given which goes to show that the 3rd wave is only in the imagination of the appellant. Therefore, I am not convinced by the appellant's plea.

6.2 With regard to Condonation of delay Section 35 of Central Excise Act, 1944 states as follows:-

Section 35. Appeals to [Commissioner (Appeals)].-

(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a [Principal Commissioner of Central Excise or Commissioner of Central Excise], may appeal to the [Commissioner of Central Excise (Appeals)] [hereafter in this Chapter referred to as the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days. ....

6.3 I find that the appellant has not adduced any 'sufficient' cause which 'prevented' their filing of appeal. Late handing over of papers to advocate cannot be a reason which could 'prevent' filing of appeal in time. Further the appellant has not given any date sheet or details of correspondence with their advocate to substantiate delayed handing over of papers either. Therefore, I am not inclined to condone the delay in filing of this appeal.

7. In view of the foregoing, the appeal is hit by time bar and therefore, has to be rejected. I therefore reject the appeal without going into the merits of the case.

8. Appeal rejected.

Commissioner (Appeals-II)"

4. The petitioner had suffered Order-in-Original No.04/2021-2022 dated 25.02.2022 in the hands of the Assistant Commissioner of GST & Central Excise, Valasaravakkam Division, Chennai South Commissionerate, Chennai.

5. The petitioner claims to have received the aforesaid order on 09.03.2022. An appeal against Order-in-Original No.04/2021-2022 dated 25.02.2022 should have been filed within a period of sixty days from the date of the aforesaid order or within a period of thirty days thereafter with an application to condone the delay.

6. However, in this case, the petitioner filed an appeal before the second respondent only on 07.05.2022 beyond the period of limitation by 28 days.

7. Although the petitioner has stated that the concerned officer of the petitioner was afflicted with Covid-19 and therefore could not file the appeal in time. The reasons stated appear to be imaginary as no records have been produced by the petitioner to substantiate the same.

8. All the same, the petitioner may have a case on merits to redress the grievance.

9. Considering the above, this Court is inclined to dispose this writ petition by quashing the impugned order and by directing the second respondent to dispose the appeal filed by the petitioner on merits and in accordance with law subject to the petitioner depositing 10% of the disputed tax over and above that is required to be deposited under Section 107 of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017. In other words, the petitioner shall deposit 20% of disputed tax as a condition for disposing the appeal.

10. This Writ Petition is disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

20.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

The Commissioner of GST & Central Excise,
Officer of the Commissioner of GST & Central Excise,
Newry Towers, Anna Nagar,
Chennai - 600 040.

C.SARAVANAN, J.

arb

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